

## **EXHIBIT A-2**

**AUTOMATIC PUBLIC TOILET AND PUBLIC SERVICE KIOSK AGREEMENT**

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1.23. Initial Capital.

As of the Start Date, CONTRACTOR shall have shareholders' equity capital, calculated in accordance with generally accepted accounting principles, of at least One Million Five Hundred Thousand Dollars (\$1,500,000) and shall provide to CITY within forty-five (45) days after the Start Date a certificate to that effect audited by an independent certified public accountant.

1.24. Guaranty of Obligation.

CONTRACTOR shall, prior to the Effective Date, provide a guaranty of its obligation to install the Automatic Public Toilets in the Initial Phase, as provided hereunder from JCDecaux USA, which guaranty shall be substantially in the form attached hereto as Appendix E.

Part 2. Automatic Public Toilet Installation.

2.01. Installation of Automatic Public Toilets.

- A. CONTRACTOR shall install Automatic Public Toilets only for which (i) the design complies with the requirements of Section 2.08, Automatic Public Toilet Design, below, (ii) all required permits have been issued and all applicable fees have been paid by CONTRACTOR, and (iii) locations have been determined pursuant to Section 2.05, Locations and Sites of Automatic Public Toilets, below. CONTRACTOR shall be and shall keep fully informed of the CITY Charter, codes, ordinances and regulations and of all state, local and federal laws in any manner affecting the performance of this Agreement, including but not limited to local and state planning, public works, electrical, plumbing and other applicable codes, and shall at all times comply with said codes. Citation of specific code sections in this Agreement shall not exonerate CONTRACTOR from its obligation of compliance with all applicable local, state, federal laws and ordinances.
- B. CONTRACTOR agrees that it shall neither have nor acquire any possessory interest in any property on which an Automatic Public Toilet has been installed pursuant to this Agreement.

2.02. Permit Approvals Required for Automatic Public Toilets.

- A. CONTRACTOR must obtain all applicable permits and pay all required permit fees before proceeding with installation of any Automatic Public Toilet. Within five (5) days following the Effective Date of this Agreement, the Director shall notify CONTRACTOR to commence work under this Agreement (the "Notice to Proceed"). Unless otherwise directed by the Director, within ninety (90) days after the Director has issued the Notice to Proceed, CONTRACTOR shall submit to the Department of Public Works location drawings for the twenty-seven (27) Automatic Public Toilet sites in the Initial Phase described in Appendix B, or substitute sites designated by the Director, together with an encroachment permit fee of three hundred fifty dollars (\$350) for each Automatic Public Toilet. The Department of Public Works shall review each location drawing, inspect each location and site and, if required, hold public hearings on each proposed Automatic Public Toilet location and site, and thereafter, unless the location is determined by the CITY to be unsuitable for installation of an Automatic Public Toilet, shall approve and issue encroachment and excavation permits for each proposed Automatic Public Toilet site. If a location is determined to be unsuitable, no additional encroachment permit fee shall be payable for substitute sites.
- B. Where any Automatic Public Toilet is to be installed on Port Property, CONTRACTOR shall submit location drawings to the PORT's Chief Harbor Engineer, together with an encroachment permit fee of three hundred fifty dollars (\$350) for each such Automatic Public Toilet, and the PORT (in lieu of the Department of Public Works) shall, as required or as necessary, review such drawings, conduct inspections and hold public hearings in accordance with the terms of this Agreement. CONTRACTOR shall obtain building permits from the PORT's Chief Harbor Engineer prior to any Automatic Public Toilet installation on Port Property. No PORT building permit fee shall be payable for such sites on Port Property.

- 2.03. CITY Review of Plans and Submittals. If CONTRACTOR has faithfully submitted site plans as required by this Agreement, CITY agrees (i) to use its best efforts to review and, if appropriate, approve permits for

installation of the Initial Phase within six (6) months of CONTRACTOR's initial submittals, and (ii) if the Start Date has not occurred within three (3) months after the Effective Date, the term of this Agreement shall be extended on a day-for-day basis until the Start Date has occurred. A reasonable schedule for submitting site plans to the Department for additional Automatic Public Toilets, if required by the CITY in accordance with Section 2.04C, shall be jointly determined by the parties.

**2.04. Automatic Public Toilets Required To Be Installed.**

- A. CONTRACTOR agrees to install Automatic Public Toilets in accordance with this Agreement within the following limits:
- B. Initial Phase. CONTRACTOR shall provide twenty-seven (27) Automatic Public Toilets under this Agreement during the Initial Phase. CONTRACTOR shall complete the installation of the first twenty (20) Automatic Public Toilets within six (6) months of the Start Date. CONTRACTOR shall complete the installation of the remaining Automatic Public Toilets in the Initial Phase in three (3) sub-phases, installing two (2) Automatic Public Toilets in each of the first two (2) such sub-phases and three (3) Automatic Public Toilets in the remaining such sub-phase within six (6) months after the issuance of all applicable permits for all of the Automatic Public Toilets (and associated Public Service Kiosks) in that sub-phase. There shall be ninety (90) Public Service Kiosks installed within the first six (6) months of the Start Date, nine (9) Public Service Kiosks in each of the first two (2) sub-phases, and thirteen (13) Public Service Kiosks installed in the remaining such sub-phase as described herein.
- C. Maximum Requirement. The CITY, at its sole discretion, but subject to the terms and conditions of this Agreement, including without limitation Section 3.05, Locations and Sites of Public Service Kiosks, Paragraph B, Additional Public Service Kiosk Locations, may require CONTRACTOR to provide up to a maximum of fifty (50) Automatic Public Toilets (inclusive of the twenty-seven (27) Automatic Public Toilets in the Initial Phase) during the term of the Agreement; provided, however, that (i) CONTRACTOR may not be required to provide any Automatic Public Toilets in excess of those in the Initial Phase until at least one (1) year after the completion of the

installation of the Initial Phase, (ii) CONTRACTOR shall not be required to install more than eight (8) of such additional Automatic Public Toilets in any one (1) year, and (iii) CITY shall exercise its option to require such additional Automatic Public Toilets, if at all, by the date five (5) years after the Start Date. If CITY does not exercise its option to require a total of fifty (50) Automatic Public Toilets by the date five (5) years after the Start Date, but thereafter wishes to increase the number of Automatic Public Toilets up to said total, then CITY and CONTRACTOR shall negotiate in good faith a possible modification to this Agreement only as to an extension of the term of the Agreement.

2.05. Locations and Sites of Automatic Public Toilets. CITY shall designate the locations for all Automatic Public Toilets. CONTRACTOR shall install the Automatic Public Toilets at locations designated and approved in accordance with this Section 2.05.

- A. Initial Phase. A preliminary list of locations for the Automatic Public Toilets in the Initial Phase prepared by CITY is attached as Appendix B. In the event any of the locations listed in Appendix B are determined by the CITY to be unsuitable for Automatic Public Toilet installation prior to the issuance of permits therefor, or are disapproved by CONTRACTOR pursuant to Paragraph C of this Section 2.05, then the CITY shall designate an equal number of alternate locations.
- B. Additional Automatic Public Toilet Locations. If CITY elects to require the installation of additional Automatic Public Toilets pursuant to Section 2.04, Automatic Public Toilets Required To Be Installed, Paragraph C, Maximum Requirement, above, or orders or permits the relocation of any Automatic Public Toilet in accordance with this Agreement, CITY shall designate locations for installation of those additional Automatic Public Toilets, as provided herein.
- C. Review and Approval of Automatic Public Toilet Locations. CITY and CONTRACTOR shall inspect the proposed locations and exchange information regarding the suitability of each such location for an Automatic Public Toilet. CITY acknowledges that the installation of the Automatic Public Toilets requires clear space of at least three and one-half feet (3-

1/2') below the surface of the slab. If a proposed location will not provide the clear space necessary for the installation of the Automatic Public Toilet, CONTRACTOR may disapprove the location and CITY shall designate a substitute location. Except as provided in Paragraph D of this Section 2.05, CONTRACTOR shall be obligated to incur a maximum cost of Twenty-Thousand Dollars (\$20,000) for each Automatic Public Toilet for the cost of utility connections, including sewer, electrical, water and telephone connections, the costs of any trenching and street restoration required in connection with such utility connections and costs of extraordinary site preparation, such as demolition of existing structures or construction of a sidewalk bulb. In the event that such costs would exceed a total of Twenty-Thousand Dollars (\$20,000), CONTRACTOR may disapprove the location, and CITY shall designate a substitute location.

- D. If CITY elects to require CONTRACTOR to install Automatic Public Toilets on Port Property where CONTRACTOR will encounter special site conditions, CONTRACTOR shall be obligated to incur a maximum cost of Forty-Thousand Dollars (\$40,000) for each of two (2) such Automatic Public Toilets on Port Property, for the cost of utility connections, including sewer, electrical, water and telephone connections, the costs of any excavation or restoration required in connection with such utility connections and the costs of extraordinary site preparation, such as making utility connections on piers. In the event that such costs would exceed a total of Forty-Thousand Dollars (\$40,000), CONTRACTOR may disapprove the location and the CITY may designate a substitute location.

- E. Specific Sites. CONTRACTOR shall present site plans showing the precise site of the Automatic Public Toilet to the Department of Public Works for approval as more specifically required in Section 2.10, Location Drawings and Engineering Plans for Automatic Public Toilets, which approval shall not be unreasonably withheld. At some locations, the Automatic Public Toilet may be installed on a new sidewalk bulb to be constructed by CONTRACTOR, subject to CITY approval and upon the conclusion of proper street encroachment proceedings: provided, however, that any additional fees payable to the CITY as a result of such bulb shall count against the

twenty-thousand-dollar (\$20,000) maximum cost referred to in Paragraph C above. Without limitation on the provisions of Paragraph C, Review and Approval of Automatic Public Toilet Locations, above, if CONTRACTOR finds a location to be unsuitable or infeasible as a site for installation of an Automatic Public Toilet, CONTRACTOR may appeal to the Director for abandonment of that location and for a substitute location.

- 2.06. Relocation of Automatic Public Toilets. CONTRACTOR may not relocate or remove an Automatic Public Toilet without the CITY'S permission. The CITY may, at the order of the Director, direct the relocation of up to one (1) Automatic Public Toilet in any twelve-month period (non-cumulative) for which CONTRACTOR will bear the full cost of removal and relocation, subject to Section 5.11, Relocation Costs, below. In the event that the terms and conditions of Section 5.11, Relocation Costs, are met and CONTRACTOR fails to remove and relocate an Automatic Public Toilet within the time directed by the CITY, CITY may, at its sole discretion, cause the removal and storage or relocation of said Automatic Public Toilet and recover any and all costs incurred from CONTRACTOR as provided in Section 1.12, Letter of Credit, Paragraph C. Default of Contractor. Any costs not so recovered shall be paid directly to CITY by CONTRACTOR upon the invoice therefor. CONTRACTOR may also, with the CITY'S permission, elect to relocate and remove any Automatic Public Toilet, for which CONTRACTOR shall bear the full cost of removal and relocation, including sidewalk and curb repair if the same is affected by the removal. The new location of any such relocated Automatic Public Toilet shall be determined in accordance with Section 2.05, Locations and Sites of Automatic Public Toilets, Paragraph C, Review and Approval of Automatic Public Toilet Locations, above. In the event the Port Director directs CONTRACTOR to remove any Automatic Public Toilet on Port Property, CONTRACTOR shall remove such toilet within seventy-two (72) hours (excluding Sundays and holidays) provided that the PORT has at the time of removal issued permits for installation at another location for the Automatic Public Toilet, which location shall have been approved by CONTRACTOR under the terms of this Agreement. Such removal and relocation shall be subject to the limits set forth above in this Section 2.06 and in Section 5.11, Relocation Costs.
- 2.07. Clearance Requirements for Automatic Public Toilets. All Automatic Public Toilets, wherever located, shall be placed in accordance with the terms of Department of



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by the Director, and as modified from time to time by subsequent Director's orders. After the installation of an Automatic Public Toilet, CITY shall use its best efforts not to place any new structures or obstacles within the specified clearance area or which would obstruct the access to such Automatic Public Toilet. If after the installation of the Automatic Public Toilet, CITY shall place any new structures or obstacles within the specified clearance area, CONTRACTOR shall not be required to relocate that Automatic Public Toilet to accommodate the CITY's structure, except as provided in Section 2.06, Relocation of Automatic Public Toilets, above.

- 2.08. Automatic Public Toilet Design. Subject to the provisions of this Section 2.08 and Section 2.09, Approval of Other Agencies, below, CONTRACTOR shall design, construct, and install the Automatic Public Toilets contracted for under this Agreement in conformity with the plans and specifications attached hereto as Appendix C. Such plans and specifications may be modified by the CONTRACTOR, only with the prior written approval of the Director. Such approval shall not be unreasonably withheld if the proposed change does not materially affect the external appearance or the disabled access requirements of the Automatic Public Toilets or adversely affect the operation of the Automatic Public Toilets. The two (2) display panels on the Automatic Public Toilets shall be illuminated during nighttime hours. CONTRACTOR shall also create, reproduce and install on one side of each Automatic Public Toilet, on display panels which may be illuminated, a map of the CITY and County of San Francisco, which shall have been approved by the CITY, which approval shall not be unreasonably withheld or delayed. CONTRACTOR shall create, reproduce and install on one side of each Automatic Public Toilet located on Port Property, a map of the waterfront of the CITY, which shall have been approved by the Port Director, which approval shall not have been unreasonably withheld or delayed. All such maps to be created and installed by CONTRACTOR shall be based on information which shall have been provided to CONTRACTOR by the CITY and the Port Director. CONTRACTOR shall update said maps at least every six (6) years.

2.09. Approval of Other Agencies.

- A. Approval of Recreation and Park Commission -- When Required. Additional locations of Automatic Public Toilets on real property owned by or under the

jurisdiction of or fronting the property of the San Francisco Recreation and Park Department shall be subject to review and approval by the Recreation and Park Commission.

- B. Approval of Port Commission; Bay Conservation Development Commission -- When Required. Locations of Automatic Public Toilets on real property owned by or under the jurisdiction of the Port of San Francisco shall be subject to review and approval by the Port Commission. In addition, any such additional locations within one hundred feet (100') of the San Francisco Bay shoreline shall be reviewed by the Bay Conservation and Development Commission.
- C. Approval of Port Director -- When Required. Location, relocation or removal of any Automatic Public Toilet on Port Property shall be subject to the review and approval of the Port Director and of Port engineering staff (in lieu of the Department of Public Works), in accordance with this Agreement.

- 2.10. Location Drawings and Engineering Plans for Automatic Public Toilets. Location drawings shall contain a twenty feet (20') to one inch (1") scale (20:1 scale) representation of the proposed Automatic Public Toilet site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties. The drawing also shall give all necessary street dimensions, such as sidewalk width and street width, and denote all surface and subsurface structures, including hydrants, utility poles and catch basins, subsidewalk basements, transit shelters, bus stops and their accurate positions. After approval of a particular location (including any required public hearing), CONTRACTOR must also submit to the Department of Public Works engineering plans showing sewer connections, water service connections, electrical service connections and foundation details for each Automatic Public Toilet, which plans must be stamped and signed by an engineer registered with the State of California. CONTRACTOR is responsible for identifying all utility lines located beneath the Automatic Public Toilet and for showing all such utility lines on the location drawing and notifying underground service alert prior to any excavation. Under this Agreement, the CITY must approve the location and engineering drawings and issue encroachment and excavation permits before CONTRACTOR may commence work on a particular site or location.

- 2.11. Electrical, Sewage, Telephone and Water Services; Installation. Subject to Paragraph C below, CONTRACTOR shall bear the full cost of the connection of the Automatic Public Toilets to water supply and electrical, sewer and telephone services, and the operating charges for water supply and electrical, sewer and telephone service charge to each Automatic Public Toilet. If feasible, CITY shall permit CONTRACTOR to utilize the CITY's electrical system, in which event CONTRACTOR shall pay the same rate charged to CITY agencies.
- A. Electrical Connections and Related Work. CONTRACTOR shall arrange and perform all internal electrical components and hook-up procedures in accordance with the San Francisco Electrical Code. All electrical service lines in each Automatic Public Toilet site shall be underground and shall originate from the point-of-services designated by CITY or by Pacific Gas & Electric Company ("PG&E"). CONTRACTOR shall contact PG&E and arrange for additional service not provided by CITY and shall pay CITY or PG&E directly for all charges for service connections and electricity.
  - B. Sewage, Water Service and Drainage. CONTRACTOR shall contact the San Francisco Water Department and arrange for water service and shall pay the San Francisco Water Department for all charges for service connections and water use. CONTRACTOR shall arrange and perform sewer hook-up procedures in accordance with the San Francisco Plumbing Code. CONTRACTOR shall contact the Department of Public Works to establish sewer service and to arrange to pay for all sewer service charges.
  - C. Unanticipated Conditions. In the event that during the installation of any Automatic Public Toilet, the CONTRACTOR encounters unanticipated conditions beyond its reasonable control which would significantly increase the cost of installation of the Automatic Public Toilet, CONTRACTOR, upon notice to the CITY, may restore the work area to its pre-installation condition, and an alternate location for the Automatic Public Toilet shall be designated in accordance with Section 2.05 of this Agreement.
- 2.12. Restoration of Sites. When each Automatic Public Toilet installation is complete, CONTRACTOR shall remove all excess materials and restore the work area.

**Part 3. Public Service Kiosk License.**

**3.01. Installation of Public Service Kiosks.**

- A. CONTRACTOR shall have the right, subject to the terms and conditions of this Agreement, to install Public Service Kiosks only for which (i) the design complies with the requirements of Section 3.08, Public Service Kiosk Design, (ii) all required permits have been issued, and (iii) locations have been determined pursuant to Section 3.05, Location and Sites of Public Service Kiosks, and all applicable fees have been paid by the CONTRACTOR. CONTRACTOR shall be and shall keep fully informed of the CITY Charter, codes, ordinances and regulations and of all state, local and federal laws in any manner affecting the performance of this Agreement, including but not limited to local and state planning, public works, electrical, plumbing and other applicable codes, and shall at all times comply with said codes. Citation of specific code sections in this Agreement shall not exonerate CONTRACTOR from its obligation of compliance with all applicable local, state, federal laws and ordinances.
- B. CONTRACTOR agrees that it shall neither have nor acquire any possessory interest in any property on which a Public Service Kiosk has been installed pursuant to this Agreement.

**3.02. Permit Approvals Required For Public Service Kiosks.**

- A. CONTRACTOR must obtain all applicable permits before proceeding with installation of any Public Service Kiosk. Within ninety (90) days after the Director has issued the Notice to Proceed, CONTRACTOR shall submit to the Department of Public Works location drawings for one hundred twenty one (121) Public Service Kiosks in the Initial Phase, together with an encroachment fee of Three Hundred Fifty Dollars (\$350) for each Public Service Kiosk. The Department of Public Works shall review each location drawing, and inspect each location and site and hold public hearings, if required, on each proposed Public Service Kiosk location and site, and thereafter, unless the site is determined to be unsuitable for installation of a Public Service Kiosk, shall approve and issue encroachment and excavation permits for each proposed Public Service Kiosk site. CITY shall use its best efforts to assist CONTRACTOR to receive

permit approvals from any applicable state or regional agencies with jurisdiction over any particular locations, including BCDC and CalTrans.

- B. Where any Public Service Kiosk is to be installed on Port Property, CONTRACTOR shall submit location drawings to the PORT's Chief Harbor Engineer, together with an encroachment fee of Three Hundred Fifty Dollars (\$350) for each Public Service Kiosk, and the PORT (in lieu of the Department of Public Works) shall, as required or as necessary, review such drawings, conduct inspections and hold public hearings in accordance with this Agreement. CONTRACTOR shall obtain building permits from the PORT's Chief Harbor Engineer prior to any Public Service Kiosk installation on Port Property. No PORT building permit fee shall be payable for such sites on Port Property.

3.03. CITY Review of Plans And Submittals. If CONTRACTOR has faithfully submitted site plans as required by this Agreement, CITY agrees to use its best efforts to review and, if appropriate, approve permits for installation of the Initial Phase within six (6) months of CONTRACTOR's initial submittals, all in accordance with Section 2.03 of this Agreement. A reasonable schedule for submitting site plans to the Department for additional Public Service Kiosks, if additional Automatic Public Toilets are required by the CITY in accordance with the Section 2.04C, shall be jointly determined by the parties.

3.04. Number of Public Service Kiosks Permitted. CONTRACTOR shall have the right to install, operate and maintain Public Service Kiosks at a ratio of no more than four and one-half (4.5) Public Service Kiosks for each one (1) Automatic Public Toilet provided pursuant to this Agreement. CONTRACTOR shall not display advertising on any Public Service Kiosks pursuant to this Agreement, on or before the date CONTRACTOR completes installation of the associated Automatic Public Toilet under this Agreement. In the Initial Phase of the Agreement, CONTRACTOR shall have the right to install a maximum of one hundred twenty one (121) Public Service Kiosks at a ratio of no more than 4.5 kiosks to each Automatic Public Toilet installed pursuant to this Agreement. Thereafter, except as expressly provided by the terms of this Agreement, CONTRACTOR shall have the right to install additional Public Service Kiosks at no more than the ratio set forth herein. If an odd number of additional

Automatic Public Toilets in excess of those in the Initial Phase is required, the permitted number of associated Public Service Kiosks shall be rounded up to the next whole number.

3.05. Locations and Sites of Public Service Kiosks.

- A. Initial Phase. The CITY retains the right to approve the locations of all Public Service Kiosks proposed by CONTRACTOR, which approval shall not be unreasonably withheld. In the event one or more locations for the Public Service Kiosks proposed by CONTRACTOR are disapproved by CITY, then CITY and CONTRACTOR shall cooperate to identify suitable alternate locations for installation of the Public Service Kiosks, within the same general area if possible. Permits shall not be issued for any location unless and until CITY and CONTRACTOR have mutually agreed upon such location. Of the one hundred twenty one (121) Public Service Kiosks in the Initial Phase, at least one hundred ten (110) shall be located in the Downtown Area, and of those, at least forty (40) shall be located on Market Street, unless CONTRACTOR otherwise agrees. If CONTRACTOR finds any previously approved location to be unsuitable or infeasible as a site for a Public Service Kiosk, CONTRACTOR may appeal to the Director for abandonment of that location and may propose an alternate or substitute location, which shall be subject to the CITY's approval according to the provisions of this Paragraph. Any substitution of locations for Public Service Kiosks shall not change the ratio of Public Service Kiosks to Automatic Public Toilets authorized by this Agreement.
- B. Additional Public Service Kiosk Locations. If CITY elects to require the installation of additional Automatic Public Toilets pursuant to Section 2.04, Paragraph C, or orders or permits the relocation of any Public Service Kiosk CONTRACTOR may, within thirty (30) days of notice of such action or order by CITY, propose locations for additional Public Service Kiosks in the ratio set forth above. The CITY retains the right to approve the locations for all such Public Service Kiosks proposed by CONTRACTOR, which approval shall not be unreasonably withheld. In the event one or more locations for the Public Service Kiosks proposed by CONTRACTOR are disapproved by the CITY, then CONTRACTOR and CITY shall cooperate to identify suitable alternate locations for

installation of the Public Service Kiosks. Permits shall not be issued for any location until CITY and CONTRACTOR have mutually agreed upon such location. Of the additional locations approved pursuant to this Section 3.05B, approximately fifty-eight percent (58%) (60 of the total possible 104 additional Public Service Kiosks) shall be located in the Downtown Area, and of those, approximately seventeen percent (17%) (10 of the 60 additional Public Service Kiosks located in the Downtown Area) shall be located on Market Street, unless CONTRACTOR otherwise agrees. Any Public Service Kiosks relocated pursuant to Section 3.06, if previously located in the Downtown Area shall be relocated in the Downtown Area, and if previously located on Market Street shall be relocated on Market Street, except with the consent of CONTRACTOR. If CONTRACTOR finds any previously approved location to be unsuitable or infeasible as a site for a Public Service Kiosk, CONTRACTOR may appeal to the Director for abandonment of that location and may propose an alternate or substitute location, which shall be subject to the CITY's approval according to the provisions of this Paragraph. Any substitution of locations for Public Service Kiosks shall not change the ratio of the Public Service Kiosks to Automatic Public Toilets authorized by this Agreement.

- C. Specific Sites. CONTRACTOR shall be responsible for determining the precise site, and the orientation of the advertising and public service panels, for each Public Service Kiosk at the designated location and to present site plans to the Department of Public Works for approval in the manner provided in Section 3.10, Location Drawings and Engineering Plans for Public Service Kiosks.

- 3.06. Relocation of Public Service Kiosks. CONTRACTOR may not relocate or remove a Public Service Kiosk without CITY'S permission. CITY does not guarantee any specific location or site for the duration of this Agreement. Subject to the provisions of Section 5.11 below, CITY may request CONTRACTOR to remove or relocate up to three (3) Public Service Kiosks in any twelve-month period (non-cumulative) because of private development, public works projects, public convenience or any other reason, for which CONTRACTOR shall bear the full cost of removal and relocation, including sidewalk and curb repair if the same is affected by the removal or relocation and if said removal and relocation is ordered by the CITY. If in any



twelve-month period, the CITY orders the relocation of more than three (3) of the Public Service Kiosks provided pursuant to this Agreement, regardless of how many Public Service Kiosks have been relocated in prior years, CITY shall bear the full costs thereof, including sidewalk and curb repair if the same is affected by the relocation, subject to Section 5.11, below, of this Agreement. CITY shall reimburse CONTRACTOR for such costs within one-hundred-twenty (120) days of the invoice therefor, accompanied by reasonable documentation of the costs incurred. In the event that the terms and conditions of Section 5.11, Relocation Costs, are met and CONTRACTOR fails to remove and relocate a Public Service Kiosk within the time directed by the CITY, CITY may, at its sole discretion, cause the removal and storage or relocation of said Public Service Kiosk and recover any and all costs incurred from CONTRACTOR as provided in Section 1.12, Letter of Credit, Paragraph C, Default of Contractor. Any costs not so recovered shall be paid directly to CITY by CONTRACTOR upon the invoice therefor. The new location of any relocated Public Service Kiosk shall be determined in accordance with Section 3.05, Paragraph B above. In the event the Port Director directs CONTRACTOR to remove any Public Service Kiosk on Port Property, CONTRACTOR shall remove such kiosk within seventy-two (72) hours (excluding Sundays and holidays) provided that the PORT has at the time of removal issued permits for installation at another location for the Public Service Kiosk, which location shall have been approved by CONTRACTOR under the terms of this Agreement. Such removal and relocation shall be subject to the limits set forth above in this Section 3.06 and Section 5.11, Relocation Costs.

- 3.07. Clearance Requirements For Public Service Kiosks. All Public Service Kiosks, wherever located, shall be placed in accordance with the terms of Department of Public Works Order No. 163,368 (Appendix G hereto), issued by the Director, and as modified from time to time by subsequent Director's orders; provided, however, that such subsequent orders are subject to the provisions of Paragraph E of Section 1.18. After the installation of a Public Service Kiosk, to the extent feasible, CITY shall use its best efforts not to place any new structures or obstacles within the specified clearance area or which would obstruct the visibility of or access to such Public Service Kiosk. If after the installation of a Public Service Kiosk, CITY shall place any new structures or obstacles within the specified clearance area, CONTRACTOR shall not be required to relocate that Public Service



Kiosk to accommodate the CITY's structure except as provided in Section 3.06.

- 3.08. Public Service Kiosk Design. Subject to the provisions of this Section 3.08 and Section 3.09 below, CONTRACTOR shall design, construct and install the Public Service Kiosks provided under this Agreement in conformity with the plans and specifications attached hereto as Appendix D, which have been approved by CITY, including its Art Commission. Such plans and specifications may be modified by CONTRACTOR, only with the prior written approval of the Director. Such approval shall not be unreasonably withheld if the proposed change does not materially affect the external appearance or accessibility of the Public Service Kiosks.
- 3.09. Approval of Other Agencies.
- A. Approval of Recreation and Park Commission -- When Required. Locations of Public Service Kiosks on real property owned by or under the jurisdiction of or immediately adjacent to property of the San Francisco Recreation and Park Department shall be subject to review and approval by the Recreation and Park Commission.
- B. Approval of Port Commission; Bay Conservation Development Commission -- When Required. Locations of Public Service Kiosks on real property owned by or under the jurisdiction of the Port of San Francisco shall be subject to review and approval by the Port Commission. In addition, locations of Public Service Kiosks on real property located within one hundred feet (100') of the San Francisco Bay shoreline shall be reviewed by the Bay Conservation and Development Commission, in addition to any other necessary approvals.
- 3.10. Location Drawings and Engineering Plans for Public Service Kiosks. Location drawings submitted to CITY for approval for each licensed Public Service Kiosk shall contain a twenty-foot-(20')-to-one-inch-(1") scale (20:1 scale) representation of the proposed Public Service Kiosk site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties. The drawing also shall give all necessary street dimensions, such as sidewalk width and street width, and denote all surface and subsurface structures, including hydrants, utility poles and catch basins, subsidewalk basements, transit

shelters, bus stops and their accurate positions. After approval of a particular location (including any required public hearing), CONTRACTOR must also submit to the Department of Public Works engineering plans showing electrical service connections and foundation details for each Public Service Kiosk, which plans must be stamped and signed by an engineer registered with the State of California. CONTRACTOR is responsible for identifying all utility lines located beneath the Public Service Kiosk site and for showing all such utility lines on the location drawing. As described in Section 2.10, Location Drawings and Engineering Plans for Automatic Public Toilets, of this Agreement, the CITY must approve the location and engineering drawings and issue encroachment and excavation permits before CONTRACTOR may commence work on a particular site or location.

- 3.11. Electrical Connections and Service Responsibility of Contractor. CONTRACTOR shall bear the full responsibility, including all costs, of furnishing, installing and maintaining electrical services to each Public Service Kiosk permitted under this Agreement. CONTRACTOR shall arrange and perform all internal electrical components and hook-up procedures necessary to the installation of the Public Service Kiosks in accordance with the San Francisco Electrical Code. All electrical service lines at each Public Service Kiosk site shall be underground and shall originate from the point-of-service designated by CITY or by Pacific Gas & Electric Company ("PG&E"), respectively. CITY shall designate the CITY-owned street lighting conduit that CONTRACTOR can utilize to house any electrical service wiring for the Public Service Kiosk. If feasible, CITY shall permit the CONTRACTOR to utilize the CITY's electrical system, in which event, CONTRACTOR shall pay the same rate charged to CITY agencies. CONTRACTOR shall contact PG&E and arrange for additional service not provided by CITY and shall pay CITY or PG&E directly for all charges for service connections and electricity.
- 3.12. Restoration of Sites. When each Public Service Kiosk installation is complete, CONTRACTOR shall remove all access materials and restore the work area.

#### Part 4. Advertising.

- 4.01. Advertising Displays. Advertising posters may be displayed on Public Service Kiosks as provided in this Section.

- 4.02. Size and Location of Advertising. Advertising posters displayed pursuant to this Agreement shall not exceed fifty-two (52) square feet in area nor be greater than twelve feet (12') in height nor five feet (5') in width, and shall be located only within the two (2) advertising display panels of each Public Service Kiosk, as selected by CONTRACTOR. The panels on the Public Service Kiosks may be illuminated up to twenty-four (24) hours a day at the discretion of CONTRACTOR; provided, however, in unusual circumstances CONTRACTOR shall, at the request of the Director, cooperate to agree upon mutually agreeable hours of illumination.
- 4.03. Advertising Rights.
- A. Commercial Advertising. CONTRACTOR, its employees or approved subcontractors, may contract with others to sell space for commercial advertising on the Public Service Kiosks. CONTRACTOR may also display on such panels its own advertisements and promotions designed to increase the sale of advertising space.
  - B. Noncommercial Advertising Space. CITY shall have the right to place informative material on the two (2) display panels on each Automatic Public Toilet and on one display panel on each Information Kiosk (as defined in Section 5.10, Public Service Use of Public Service Kiosks, Paragraph C, Information Kiosks, of this Agreement). Display panels on Information Kiosks located on Port Property shall be used exclusively for noncommercial PORT purposes. CONTRACTOR agrees to install and display informative material provided by CITY at no cost to CITY in a manner which neither interferes with advertising placed by CONTRACTOR nor generates overtime costs for CONTRACTOR; CITY agrees not to sell such reserved space to commercial advertisers either directly or through any intermediary.
  - C. Public Service Announcements. CONTRACTOR shall have the right, at its own discretion, to display free of charge certain public, educational, and charitable displays on space not contracted for use by paid advertisers and not otherwise being used by CONTRACTOR for purposes described in this Section.
- 4.04. Changes in Authorized Advertising. The parties mutually acknowledge and agree that the advertising rights granted under this Agreement are only incidental to the conduct of the CITY's municipal business. Accordingly, CONTRACTOR

understands and agrees that the advertising rights granted herein may be affected by changes in the conduct of the CITY's municipal affairs. CITY shall have no liability for any such change affecting the level or scope of advertising authorized by this Agreement. CONTRACTOR acknowledges that the particular locations available for Public Service Kiosks may vary from time to time for various reasons, including administrative and/or legislative determinations by CITY relative to the desirability of having Public Service Kiosks in a particular location. CITY will give CONTRACTOR at least ninety (90) days written notice of any decision regarding changes required in advertising Public Service Kiosks. CITY will, where possible, identify replacement locations for any such advertising required to be removed from another location pursuant to such administrative and/or legislative determination. Nothing in this Section 4.04 shall be construed to limit the provisions of Section 1.18, Termination of Agreement, Paragraph F, Change of Law, of this Agreement.

- 4.05. Design Considerations and Use of Materials. It is the intent of both CITY and CONTRACTOR to provide an advertising program which is effective and aesthetically pleasing to residents and visitors of San Francisco and which will be beneficial to both parties. The parties accordingly agree to maintain throughout the term of this Agreement a continual liaison and exchange of plans and information to assure successful implementation of this Agreement.
- 4.06. Advertising Material. CONTRACTOR is expected at all times to use good judgment in accepting any material for advertising on Public Service Kiosks. CONTRACTOR agrees to remove promptly, upon written demand by the Director of Public Works, or, with respect to advertising displays on Port Property, upon written demand by the Port Director, any advertisement deemed to be objectionable, on stated grounds which shall be reasonable and lawful.
- 4.07. Limitation on Tobacco Advertising. CONTRACTOR agrees that space devoted to advertising of tobacco products shall not exceed twenty percent (20%) of its total available space in any one year during the term of this Agreement.
- 4.08. Public Information Campaign. CONTRACTOR shall develop and implement a public information campaign designed to educate the public about the Automatic Public Toilets and Public Service Kiosks and to encourage public cooperation in protecting the Automatic Public Toilets from misuse.

The public information campaign shall take place around the time that the Initial Phase of the Automatic Public Toilets become operational and shall include, but not be limited to, the following:

- A. Design and reproduction of printed material describing the use of the Automatic Public Toilets, and encouraging the public cooperation in protecting the Automatic Public Toilets from misuse;
- B. Distribution of the printed materials, particularly through schools and nonprofit agencies serving the disabled and the homeless;
- C. Design, reproduction and installation of posters to be displayed in the Automatic Public Toilets and/or Public Service Kiosks; and
- D. Press releases to major media, including newspapers and radio and television stations.

#### Part 5. Maintenance and Operation.

- 5.01. Automatic Public Toilet and Public Service Kiosk Maintenance and Operation. CONTRACTOR shall have full responsibility to operate and maintain all Automatic Public Toilets and Public Service Kiosks installed under this Agreement as provided herein.
- 5.02. Hours of Operation. Each Automatic Public Toilets shall be operational during the hours from 6:00 a.m. to 10:00 p.m. every day, unless otherwise agreed by CONTRACTOR and the Director.
- 5.03. Services to be Furnished by CONTRACTOR. CONTRACTOR, its employees, or authorized subcontractors shall provide the following services in connection with the maintenance and operation of the Automatic Public Toilets and Public Service Kiosks during the entire term of this Agreement:
  - A. Continuously maintain in a clean, graffiti-free, safe, and first-class condition, in a manner consistent with the more specific standards elsewhere provided in this Agreement, all Automatic Public Toilets, Public Service Kiosks, advertising panels, and any other displays installed under this Agreement;

- B. Place, replace and maintain in a clean, graffiti-free, safe, and first-class condition, in a manner consistent with the more specific standards elsewhere provided in this Agreement, all advertising copy, advertisements, posters, public information and display materials;
  - C. Make a continuous, full-time, and good faith effort to sell the greatest practicable amount of advertising;
  - D. Provide an experienced sales force;
  - E. Maintain an office and shop facilities in the CITY and County of San Francisco for JCDecaux United Street Furniture, Inc. which shall serve as the western United States headquarters and training center for JCDecaux public toilets and street furniture;
  - F. Assure the best quality design and production of exhibits and advertising material to be installed or used in advertising displays;
  - G. Provide the necessary personnel to assure the maintenance of Automatic Public Toilets and Public Service Kiosks and displays of advertising as provided herein.
- 5.04. Maintenance Schedule. CONTRACTOR shall be responsible for maintaining all Automatic Public Toilets and Public Service Kiosks installed under this Agreement in clean, graffiti-free, safe, first-class condition, throughout the duration of this Agreement, including refurbishing, reconditioning, and if necessary, replacing any Automatic Public Toilets and Public Service Kiosks at no cost to the CITY. CONTRACTOR shall also develop a log for recording all inspections and maintenance work performed on each Automatic Public Toilet and Public Service Kiosk, as required in Section 1.13, Maintenance and Complaint Log, Paragraph A, Maintenance Log.
- 5.05. Inspection and Clean-Up of Automatic Public Toilets and Public Service Kiosks. CONTRACTOR shall inspect each Automatic Public Toilet at least once per day (Sundays and bank holidays excepted) and shall inspect each Public Service Kiosk at least once per week, except that CONTRACTOR shall inspect each Automatic Public Toilet on Port Property at least once daily (including Sundays and holidays). CONTRACTOR shall inspect any site more

frequently if conditions at that site so require. At the time of every inspection, CONTRACTOR shall, if necessary, clean and wash each Automatic Public Toilet and Public Service Kiosk. In addition, CONTRACTOR shall inspect all fixtures at each site and, if needed, shall replace defective fixtures within the time frames provided in Section 5.06 below. CONTRACTOR shall remove all graffiti, stickers, unauthorized posters and flyers, litter, dust, dirt and weeds and other rubbish from each Automatic Public Toilet and Public Service Kiosk. Notwithstanding any other provision of this Agreement, CONTRACTOR shall not be required to provide security personnel at the site of the Automatic Public Toilets or Public Service Kiosks.

- 5.06. Repair and Replacement. Upon observing or receiving notification of any damage, vandalism, or graffiti in, on or around any Automatic Public Toilet or Public Service Kiosk CONTRACTOR shall commence to repair or replace said damage, vandalism, or graffiti, within twenty-four (24) hours, exclusive of weekends and bank holidays. If an Automatic Public Toilet or Public Service Kiosk is destroyed, CONTRACTOR shall within twenty-four (24) hours secure or remove the remains of the Automatic Public Toilet or Public Service Kiosk and shall thereafter replace the Automatic Public Toilet or Public Service Kiosk at that site within three (3) months. In conjunction with such removal, CONTRACTOR shall, at its own expense, restore the affected sidewalk and curb area to a safe, finished condition. If CONTRACTOR does not maintain inspections as scheduled and remedy existing deficiencies within such time periods, CITY shall be entitled, upon twenty-four hours notice to CONTRACTOR (or such shorter notice as may be feasible in an emergency), to make the repairs and, at CITY's election, to (i) bill CONTRACTOR for the work performed, or (ii) recover any and all costs incurred from CONTRACTOR as provided in Section 1.12, Letter of Credit, Paragraph C. Default of Contractor. Any costs not so recovered shall be paid directly by CONTRACTOR to CITY upon submission of a proper invoice therefor. Subject to extension for force majeure, if any Automatic Public Toilet requires repair such that it is out of operation for forty-eight (48) consecutive hours, exclusive of weekends and bank holidays, or if any Automatic Public Toilet is destroyed and has not been replaced within three (3) months, then CONTRACTOR shall pay to CITY the sum of one hundred eight dollars (\$108.00) per each day thereafter that such Automatic Public Toilet remains out of operation. For purposes of this Paragraph 5.06, "force majeure" shall mean delays in CONTRACTOR's performance of its obligations hereunder due to acts of



God or of the public enemy, fires, floods, strikes, criminal acts of third parties, freight embargoes and unusually severe weather.

- 5.07. Vandalism of Automatic Public Toilets. In the event that CONTRACTOR's cost of repair and replacement of Automatic Public Toilets due to Vandalism during any of the first two years of operation should exceed Two-Thousand Dollars (\$2,000) per Automatic Public Toilet per year, CONTRACTOR may, by notice to CITY, request that CITY negotiate in good faith possible modifications of this Agreement to reduce such cost or provide additional revenues. Such modifications may include relocation of Automatic Public Toilets for which maintenance is a particular problem, change in the ratio of Public Service Kiosks to Automatic Public Toilets, or any other modification which would reduce such costs or provide offsetting additional revenues. In no event shall CITY be required to agree to any particular modification of this Agreement, provided, however, that it will not unreasonably withhold approval of the relocation of an Automatic Public Toilet if the cost or replacement of such Automatic Public Toilet due to Vandalism has exceeded \$2,000 per year in both of its first two years of operation. If no modification of the Agreement satisfactory to CONTRACTOR is agreed upon after one hundred twenty (120) days, CONTRACTOR may, at its option, elect to terminate this Agreement upon ninety (90) days notice to CITY. Nothing in this Agreement shall be construed to impose on CITY any responsibility or liability for costs incurred by CONTRACTOR on account of Vandalism.

- 5.08. Charge For Use of Automatic Public Toilets.

- A. CONTRACTOR shall have the right to charge for each use of the Automatic Public Toilets, subject to the limitations of this Section, and all revenue from such charges shall be retained by CONTRACTOR. The initial cost per use shall be twenty-five cents (\$.25). The cost per use may be increased (but need not be decreased) no more than once in any twelve (12) month period based on the percentage change since the Start Date in the most recently published Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers in San Francisco-Oakland Standard Metropolitan Statistical Area) as calculated on the date of the increase and rounded down to the next lower multiple of five cents (\$.05), unless a larger increase is approved by the Director.